IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 137 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASANBHAI B MANSURI HEAD CLERK (SURPLUS)

Versus

COMMISSIONER OF SCHOOL

Appearance:

1. Special Civil Application No. 137 of 2005

MR DJ BHATT for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

NOTICE SERVED for Respondent No. 3,6,9

MR VILAS G GOSWAMY for Respondent No. 4,7

MR BIPIN P JASANI for Respondent No. 5,8

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 27/04/2005

ORAL JUDGEMENT

Rule. Learned A.G.P.,Shri Hasurkar waives notice of rule on behalf of the respondent Nos.1, 2 and 3 and learned Advocate Shri Jasani waives notice of rule on behalf of respondent Nos.5 and 8. Petitioner seeks permission to delete the rest of the respondents. Permission is granted.

2. In the present petition the petitioner has challenged the order dated 5/10/2004 passed by the respondents by which the petitioner is directed to report for duty at Rajkot. The petitioner who is engaged as Head Clerk was found surplus in Ahmedabad District and was, therefore, ordered to report to the D.E.O., Rajkot by the impugned order. The petitioner approached the Gujarat Secondary Education Tribunal, Ahmedabad against the said decision by filing application No.284/2004. The Tribunal disposed of his application by making certain observations by an order dated 2/11/2004.

3. It is the case of the petitioner that he had reported for duty as directed. The concerned School Management did not permit the petitioner to report for duty and the petitioner is therefore, without any work assigned. It is the case of the petitioner that he had reported for duty in November, 2004. As against this, learned A.G.P., Shri Hasurkar produced on record communication dated 21/12/2004, 7/12/2004 and 29/12/2004. On the basis of the said documents, it is contended by him that the petitioner never reported for duty at Rajkot and he is therefore, not entitled to any salary or other benefits for the said period. To a querry from the Court whether, keeping the said controversy apart whether the petitioner had reported for duty and not permitted to join or whether, he had never reported for duty; the petitioner would be willing to report for duty now, learned Counsel for the petitioner stated that the petitioner is not ready to report for duty in Rajkot District. In view of this it is not possible for this Court to grant any salary for the intervening period to the petitioner when the stand of the Government is that he had never reported for duty to Rajkot.

4. Counsel for the petitioner further submitted that it was the case of the petitioner before the Tribunal that there are as many as three vacancies in the Ahmedabad District on which the petitioner can be accommodated. Learned A.G.P. conceeded that, even, if the petitioner was earlier validly transferred, if vacancy arises in future, he would have a claim for being recalled in his turn.

5. Considering this aspect of the matter, I find it necessary that the averments of the petitioner that there are vacancies in Ahmedabad District on which the petitioner can be accommodated, are required to be examined by the authorities. Even the Education Tribunal had asked the authority to submit a report in this regard. Accordingly, the respondents and particularly, respondent No.2 is directed to verify the averments of the petitioner that there are existing vacancies in the post of head-clerk in Ahmedabad District on which the petitioner can be accommodated. Such an exercise shall be completed within a period of four weeks from the receipt of the copy of this order. If it is found that the vacancies are existed on which the petitioner would have a claim for being recalled according to his turn, consequent action shall be taken by the authorities.

6. With this direction petition is disposed, as well as, C.A. is disposed of. Rule is made absolute to the aforesaid extent. No order as to costs. Direct Service is permitted.

(Akil Kureshi, J.)
sompura